

II. REMARKS:**a. Regarding Amendments to Claims:**

The Supplemental Action rejects all pending claims under 35 U.S.C. §112, ¶2 as being indefinite. Applicant amends the claims to overcome said rejections.

Claims 1, according to the Supplemental Action, is unclear as to whether the caller is separate from the housing. Claim 1 is amended to clarify that the caller is the combination of the housing and the reed-containing frame, and that only the housing is being claimed, not the combination of the housing and the reed-containing frame releasably captured by the housing. Claim 11 is amended to clarify that said combination is being claimed.

Claims 2 and 12, according to the Supplemental Action, lacks antecedent basis for "the contour of the user's palate". Said claims are amended to clarify that the user's (human) palate is not claimed, and to substitute "a" for "the" preceding "user's palate".

Claims 4 and 14, according to the Supplemental Action, lacks antecedent basis for "the end of each opposing arm of the caller frame". Said claims are amended to provide antecedent basis for said "end of each opposing arm of the caller frame".

Claim 6, according to the Supplemental Action, lacks antecedent basis for "the caller-housing combination". Said claim is amended to cure the indefiniteness rejection and to clarify that the caller (unclaimed combination) is being readied for placement near the user's palate.

Claim 8, according to the Supplemental Action, is indefinite because it is dependent upon canceled claim 7. Claim 8 is amended to make it depend upon pending claim 6.

b. Regarding 35 U.S.C. §102(b) Rejections:

Claims 1 and 11 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,520,567 issued to Jacobsen because, according to the Supplemental Action, figures 1-7 of Jacobsen teach a housing device comprising a reed and an essentially planar elastomeric material defining an essentially planar cavity. Applicant respectfully submits that although Jacobsen discloses a housing having a flexible edge, Jacobsen does not disclose elastomeric material providing resilience permitting the housing to flex open to either capture or release a reed-containing frame. Jacobsen's single-piece caller has a flexible peripheral edge (where the caller touches the roof of the user's mouth), comprising reinforced plastic or fabric; there is nothing in Jacobsen to suggest that such reinforcement adds or enhances elastomeric resilience, and reinforcement typically means the reinforced material is made stronger or harder rather than elastic or resilient. Neither does Jacobsen disclose a housing with a cavity that can flex open to either capture or release a reed-containing frame. To the contrary, Jacobsen discloses "adhesive-backed tape which is folded over onto itself to create a top side 14 and a bottom side 16 with the two sides being joined and secured in place at the respective adhesive-backed sides." (Jacobsen, column 2 line 66 through column 3 line 2.)

This rejection is essentially the same that appeared in previous office actions, based upon U.S. Patent No. 4,960,400 and/or U.S. Patent No. 5,061,220, both issued to Cooper. Applicant respectfully submits that, as with the Cooper rejections that have previously been overcome, the present invention is distinguishable from Jacobsen in the following respects:

- (a) The Jacobsen single-piece caller does *not allow any interchanging* of reeds/frames.
- (b) The Jacobsen single-piece caller discloses *no open cavity* for *insertion or release* of a variety of reeds/frames.
- (c) The Jacobsen single-piece caller is *not resilient*; the caller has *no conformational memory* that is one hallmark of resiliency.

Claims 2 and 12 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent

No. 5,520,567 issued to Jacobsen because, according to the Supplemental Action, Jacobsen teaches an upper surface, an essentially ventral aspect, an essentially dorsal aspect, a dorsal perimeter, a buttress and a flap essentially integrally extending dorsally from said buttress. Applicant respectfully contends that the Jacobsen single-piece caller does *not have any upper surface conformed to mimic the contour of the user's palate*. Such moldability better facilitates the blockage of air flow between the caller and the user's palate. Jacobsen noted that the physiological differences in user's palates made it necessary to vary the forward/backward positioning of the call within different user's mouths, to seal the caller against the user's palate and to assure the optimal sound-producing air channel. (Column 3 lines 30 to 50.) Whereas Jacobsen chose to add the upwardly arching flange to reduce the variations between users, by contrast Applicant chose to endow the housing with sufficient elasticity and resilience to accommodate (and benefit from) the physiological differences in the user's palates; moldability to the contours of the user's palate creates a closer and more widespread interface between the housing and the user's palate, which may also generate sufficient natural adhesion between the housing and the user's palate to reduce or eliminate the need for the user to continually use his or her tongue to push the caller up against roof of the mouth. Neither does Jacobsen disclose any cavity for capturing a reed-containing frame, as set forth hereinabove in the discussion concerning claims 1 and 11.

Claims 3 and 13 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,520,567 issued to Jacobsen because, according to the Supplemental Action, Jacobsen teaches a pair of essentially horseshoe-shaped planar halves foldedly joined at their ends, upper plane and lower plane defining a cavity and at least one resiliently-flexible reed. Applicant respectfully reiterates that Jacobsen does not disclose a housing having a free-standing quasi-horseshoe-shaped cavity with an essentially U-shaped opening sized to releasably capture a reed-containing frame. Jacobsen's adhesive-backed non-resilient concept does not anticipate Applicant's invention.

Claims 4 and 14 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,520,567 issued to Jacobsen because, according to the Supplemental Action, Jacobsen teaches

an endstop. Applicant respectfully submits that the examiner misunderstands Applicant's endstop, which is located at the ventral-most end of Applicant's invention rather at the intermediate position noted in the Supplemental Action. Applicant's endstop appears as item 34 in Fig. 3. And since Jacobsen discloses no cavity, it has no endstop that helps form one of the cavity walls.

Claim 8 is rejected because the examiner considers its limitations to be inherent in Jacobsen. Applicant respectfully disagrees. Nothing in Jacobsen discloses or envisions an essentially *convex* portion of the *upper surface* (to occupy the user's arching pathway formed by the concave palate), as illustrated by Applicant's Figure 3 (item 33) plus Figure 4 (the upper, convex portion of item 41). Significantly, Jacobsen contains no drawing similar to Applicant's Fig. 4. Jacobsen discloses only adhesive-backed tape folded over a flat aluminum reed-containing frame; there is no disclosure of any convex upper plane, nor of any concave lower plane. Figure 1 in Jacobsen discloses an upper plane that is primarily flat, except for the upwardly arching flange (24); if that figure were rotated to the view depicted in Applicant's Fig. 4, Jacobsen's Fig. 1 would not disclose any convex upper surface or concave lower surface.

Similarly, the Jacobsen single-piece caller does *not disclose or envision an essentially concave portion of the lower surface*, as claimed in Applicant's claim 10 and illustrated by Applicant's Figure 4 (item 41); such concavity better directs air over the reeds by forming an air channel between the user's tongue and the lower surface of the housing.

c. Regarding Allowable Subject Matter.

Claims 5 and 5-20 are objected to as being dependent upon a rejected base claim, which would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Since claims 7 and 21 remain canceled, Applicant understands that only claims 5, 6 and 8-20 are subject to said objection. Applicant believes that the amendments and

contentions discussed hereinabove (especially regarding claims 1-4 and 11-14) overcome the respective rejections, making it unnecessary to overcome this objection. However, to the extent that said objection still remains, Applicant has added new claim 22, which essentially incorporates all of the limitations necessary to satisfy said objection.

Claim 6 would, according to the Supplemental Action, be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, ¶2, and to include all of the limitations of the base claim and any intervening claims. Applicant believes that the amendments and contentions discussed hereinabove overcome the respective rejection, making it unnecessary to overcome this objection. However, to the extent that said objection still remains, Applicant has added new claims 22, essentially incorporates all of the limitations necessary to satisfy said objection.

III. CONCLUSION

Applicant respectfully submits that the amendments and contentions set forth hereinabove fully distinguish the present invention from all of the prior art cited in the Supplemental Action. Applicant thanks the Examiner for her assistance in this matter. Applicant believes that all rejections have been satisfied, so that all remaining claims of this Application are in condition for allowance as a utility patent.

Respectfully submitted by:

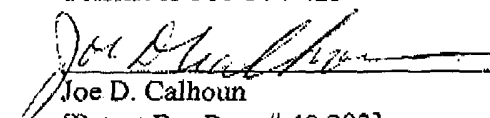
CALHOUN LAW FIRM

319 President Clinton Ave, #205

Little Rock, AR 72201

501-374-1700

Telefax to 501-374-4234


Joe D. Calhoun
[Patent Bar Reg. # 40,293]

cc: John Finley